

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

54

2971/92 with  
1458/97  
O.A. No./T.A. No.    of 199 Decided on: 9.12.97

(By Advocate: Shri L.R.Gupta, Sr. Advocate  
with Shri J.K. Dass

## VERSUS

**U.O.I. & Ors.** **Respondents**

(By Advocate: Dr. A.M. Singhvi with  
Shri Sandeep Aggarwal)

**CORAM**

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? YES
  2. Whether to be circulated to other Benches of the Tribunal? NO

*Adige*  
(S.R. ADIGE)  
VICE CHAIRMAN (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
Principal Bench

New Delhi, dated this the 9<sup>th</sup> December 1997

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)  
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

O.A. No. 2971 of 1992

Shri Chandra Prakash,  
S/o late Shri Karori Mal,  
D-II/139, Kidwai Nagar (West),  
New Delhi. ... APPLICANT

VERSUS

Union of India through

1. Shri N.N. Vohra,  
former Secretary to Govt. of India,  
Ministry of Home Affairs,  
New Delhi.  
C/o Secretary, Ministry of  
Home Affairs, New Delhi.
2. Shri Arun Mathur,  
former Director (CPS),  
Ministry of Home Affairs,  
New Delhi.  
C/o Secretary, MHA, New Delhi.
3. Shri K. Padmanabhaiah,  
Secretary to the Govt. of India,  
Ministry of Home Affairs,  
North Block,  
New Delhi. ... RESPONDENTS

O.A. No. 1458 of 1997

Shri Chandra Prakash,  
D-II/139, Kidwai Nagar (West),  
New Delhi-110023. ... APPLICANT

VERSUS

1. Union of India through  
the Secretary,  
Ministry of Home Affairs,  
New Delhi.
2. Lt. Governor,  
Govt. of NCT of Delhi,  
Delhi.
3. Shri R.K. Niyogi,  
Sr. Addl. Commissioner of Police (AP&T),  
PHQ, I.P. Estate,  
New Delhi. ... RESPONDENTS

Counsel for parties

Shri L.R. Gupta, Sr. Advocate along with  
Shri J.K. Dass for applicant

Dr. A.M. Singhvi, Ld. ASG along with  
Shri Sandeep Aggarwal for Respondents

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

As both these O.As involve common question of law and fact they are being disposed of by this common judgment.

2. For this purpose it will be relevant to refer to the factual background, which is contained in the judgment dated 23.9.92 of the Delhi High Court in CWP No. 2271/88 and 3593/90 filed by the present applicant and one Shri Sewa Das, both IPS officers of the U.T. cadre who were posted as Dy. Commissioner of Police, South Delhi and Dy. Commissioner of Police, East Delhi respectively on 31.10.84, on which date the late Prime Minister, Smt. Indira Gandhi was assassinated.

3. Consequent to that dastardly act, large scale communal riots broke out in Delhi resulting in arson, looting and killing of innocent persons **for some days.** Allegations were made to the effect that steps were not taken to control the situation and there was a complete break-down of law and order. The immediate result of this was that on 12.11.84 Shri S. Tandon, the then Commissioner of Police was transferred and in his place Shri S.S. Jog was appointed, who by his order dated 25.11.84 appointed Shri Ved Marwah, Addl. Commissioner of Police, Delhi as a one man inquiry committee to inquire into the

alleged failure of Delhi Police and to identify the causes and the officers/men behind the alleged failure of the Delhi Police to maintain law and order. That Committee was not allowed to function for any great length of time, because applicant and Shri Sewa Das in April, 1985 filed Suit No. 677/85 in the Delhi high Court inter alia praying for a decree to quash and set aside the inquiry report alleged to have been prepared by Shri Marwah and permanently injunctioning the Govt. from publishing the report. Along with the Suit an application for interim injunction was also filed and by a detailed order dated 25.11.85 a single Judge of the Delhi High Court restrained Shri Marwah and the Commissioner of Police from publishing the inquiry report and from submitting the same to the Lt. Governor, and the Union of India from taking action against the plaintiffs. None of the defendants took any steps to file an appeal against the said order and to have it set aside.

4. On 12.4.85 the Govt. of India issued a Notification under Section 3 Commission of Inquiry Act, 1952 appointing Mr. Justice Rangnath Mishra (as he then was) as a Commission of Inquiry to inquire into the allegations in regard to instances of organised violence which took place in Delhi following Smt. Gandhi's assasination. Justice Mishra submitted his report containing a recommendation for setting up of an Inquiry Committee to make further

detailed inquiry into the delinquencies and good conduct of Police Officers.

5. It was pursuant to this recommendation which was accepted by the Govt. that on 23.2.87, while the Govt. placed the report of the Rangnath Mishra Commission in the Parliament, the Delhi Administration issued an order appointing Mr. Justice Dalip K. Kapur ( Retd.) and Mr. Kusum Lata Mittal as a Committee to conduct inquiry with specific terms of reference, and submitted its report to the Administrator of Delhi within six months.

6. As per list of dates submitted by applicant, Justice Kapoor- & Mr. Mittal Inquiry Committee submitted two separate reports to L.G. Delhi on 1.3.90. Justice Kapoor declined to record any findings against any appeal unless and until an opportunity of hearing was given to the affected parties, while Mr. Mittal submitted her report indicting 72 Police Officers.

7. Meanwhile applicant and Shri Sewa Das filed CWP No.2271/88 and 3593/90 claiming similar reliefs viz. that the Notification dated 23.2.87 constituting the Committee of Justice Kapoor and Mr. Mittal be quashed and further no action be taken by respondents on any report or observation of the said Committee. Both writ petitions were dismissed by the Delhi High Court by its aforesaid judgment dated 23.9.92.

8. Meanwhile respondents had issued Memorandum dated 21.9.92 informing applicant that the Central Govt. proposed to hold an enquiry against him under Rule 8 AIS (Disc. & Appeal) Rules, 1969. The substance of the imputations of misconduct or misbehaviour in respect of which the enquiry was proposed to be held was set out in the Articles of Charge (Annexure-I); a statement of imputation of misconduct or misbehaviour in support of each article of charge was enclosed (Annexure-II); a list of documents as also a list of witnesses by whom the charges were proposed to be sustained was also enclosed (Annexure-III & IV). Applicant was called upon to submit within 10 days of the receipt of the said Memorandum a written statement in his defence, and also whether he desired to be heard in person.

9. Thereupon applicant filed O.A.No.2971/92 on 9.11.92 seeking the following relief:

".....in view of the facts and circumstances set out above and in the interest of justice, copy of the Ved Marwah Inquiry Committee Report even though not officially submitted or acted upon and copies of the separate Inquiry reports of Miss Kusum Lata Mittal as well as that Justice D.K.Kapur and statements of all the witnesses/relevant documents be ordered to be supplied to him."

10. An interim direction was also sought to stay the operation of the charge Memo until the statements of all witnesses/relevant documents and the

reports of Justice Kapoor and Km. Mittal were supplied to him, which was allowed on 17.11.92 and was extended from time to time.

11. After completion of pleadings, OA No.2971/92 was heard along with OA No.2965/92 filed by Shri Sewa Das. In its ~~judgment~~ <sup>order in</sup> dated 7.9.93 the Tribunal noted that in OA No.277/92 filed by P. Das and connected cases decided by the Tribunal on 9.3.92 it had been held that in case the truncated Kapoor-Mittal Committee report forms the basis of such action or if the name or names of any of the applicant figure in the said report, the respondents shall in all fairness give a copy of the said report to them before proceeding to take action against them." The Tribunal in its ~~judgment~~ <sup>order in</sup> dated 7.9.93 further noted that against the aforesaid order, UOI had filed SLP No.11665-72/92 and the Hon'ble Supreme Court by its order dated 21.9.92 had directed issue of notice to respondent (present applicant) and meanwhile stayed the Tribunals' order directing supply of a copy of the Enquiry Report and had also stayed further proceedings in the enquiry against respondent (present applicant). Accordingly the Tribunal by its ~~judgment~~ <sup>order in</sup> dated 7.9.93 stayed further proceedings in OA No.2971/92 till receipt of Hon'ble Supreme Court's decision in the aforesaid SLP, and UOI was directed to abide by the interim directions issued on 17.11.92 and stayed the proceedings initiated on the basis of the aforesaid charge sheet till further

orders. Both OAs 2965/92 and 2971/92 were consigned accordingly, with liberty given to parties to get them relisted after the Hon'ble Supreme Court's decision was received in SLP referred to above.

12. Thereupon applicant filed MA No.1993/95 on 16.8.95 seeking modification of the Tribunal's order dated 7.9.93 and to stay the operation of the charge Memo dated 21.9.92 or to direct respondents to consider applicant for promotion without reference and without taking into consideration the charges or the pendency of the DE against him and to promote him if found fit. The said MA was dismissed by detailed order after hearing on 21.9.95 and R.A.No.299/96 seeking review of that order was also dismissed on 14.12.95.

13. On 30.8.96 the Hon'ble Supreme Court dismissed SLPs' No.11665-72/96 .

14. Thereupon applicant filed M.A.No.1930/96 renumbered as No.2085/96 in OA No.2971/92 on 30.9.96 seeking a direction to respondents to consider him for promotion to next higher rank subject to the outcome of the D.E. This prayer was held to be totally out of scope of adjudication in the OA and unconnected with the relief prayed for in the OA and the MA was dismissed by order dated 16.12.96.

15. Thereupon applicant filed MA -446/97 in OA No.2971/92 on 10.2.97 seeking to amend OA -2971/92 by including the prayer that in the event of failure

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of respondents to supply a copy of the Mittal Report and other documents the charge Memo served upon him shall be deemed to have been quashed and he may be considered for empanelment for promotion as IGP irrespective of the pending of the charge Memo and subject to the outcome of the OA. The MA was dismissed by order dated 4.4.97 as being beyond the scope of adjudication in the OA and unconnected with the relief prayed for therein. W.P.No.1568/97 challenging the said order 4.4.97 was dismissed by the Delhi High Court on 6.5.97.

OA No.2971/92

16. In the aforesaid OA No.2971/92 applicant has sought supply of

(i) Copy of the Ved Marwah inquiry report even though not officially submitted or acted upon.

(ii) Copies of the separate inquiry reports of Ms. K.L.Mittal as well Justice D.K.Kapur.

(iii) Statements of all witnesses/relevant documents.

to enable him to submit his defence statement under Rule 8(5) AIS (Discipline & Appeal) Rules.

17. As regards (i) above, applicant himself admits that it has not been officially submitted or acted upon, and the Delhi High Court in its aforesaid judgment dated 23.9.92 had also noticed that by their earlier order dated 25.11.85, Shri Ved Marwah and the Commissioner of Police were

restrained from publishing the inquiry report and from submitting the same to the L.G., Delhi, and the Union of India from taking any action based upon the same. In this connection DPAR O.M. dated 16.8.78 (Annexure-R1 to Respondents' short reply) is relevant. In paragraph 2.1 thereof it is clarified that the statement of defence under Rule 8(5) AIS (Discipline & Appeal) Rules is expected to be limited simply to admitting or denying the charges communicated to the officer, and for such admission or denial, inspection of documents is not necessary. It adds that a request for inspection of documents at this stage made by the delinquent officer may not be accepted and it may be explained to the officer that he would get full opportunity to inspect the listed documents during the court of inquiry as per Rule 8(12). Thus when for the purpose of preparing the defence statement under Rule 8(5), inspection of documents itself may legitimately be denied, the question of supplying to applicant a copy of the Ved Marwah report which applicant himself admits not to have been officially submitted or acted upon, does not arise.

17. Regarding (ii) above i.e. the supply of reports of Mr. Mittal and Justice Kapur, Shri Singhvi stated that the Mittal report was voluminous, which indicted over 70 police personnel for negligence/desecration of duty during the 1984 riots, and by order dated 23.4.97 (Annexure-RIII) ~~the~~ applicant had been furnished extracts of those portions of the Mittal report, in which his role was narrated, and on the basis of which departmental

proceedings were initiated. He stated that applicant had however asked for the remaining portions of the Mittal Report, which concerned the other indicted police personnel even though it had no apparent relevance to his case. As regards Justice Kapur's report, he stated that it did not contain any findings but recommended that a detailed inquiry should be made only after giving an opportunity of hearing to the police officials. He forcefully argued that in the light of the contents of para 2.1 of GPAR's letter dated 16.8.78 applicant was not legally entitled to anything more from these reports, other than what had already been furnished to him for preparing his defence statement under Rule 8(5) AIS(Disc. & Appeal) Rules but went on to add that provided Respondents' caveat was recorded that under rules and instructions applicant had no legal right to access to the Mittal Report and the Kapoor Report in full; nor would it be a denial of natural justice if the same were not supplied to him; and it would not create a binding precedent on the Respondents in future, they would have no objection in furnishing him copies of the aforementioned two reports in full in the interest of expeditious disposal of the matter.

18. Regarding (iii) above, i.e. supply of statements of witnesses/ relevant documents, admittedly Ms. Mittal's report was not based upon the examination of witnesses etc., but instead relied upon written affidavits submitted to her.

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As regards the relevant affidavits / documents, supply of which is sought by applicant, they feature at Annexures III and IV of the Charge Memo dated 21.9.92. A perusal of Respondents' letter dated 14.10.92 (copy on record) shows that copies of documents listed at Annexure-III above have been supplied to him, while in respect of the other documents it has been stated that it was not feasible to make out copies of the same and he was therefore advised to come and inspect them. Shri Singhvi stated that for expeditious resolution of the matter, respondents were willing to supply another copy of documents already supplied, but in respect of those documents which were not feasible to be supplied, the offer to applicant to come and inspect them was still open, which he had not availed of till date. In this connection our attention was also invited by Shri Singhvi to the contents of Respondents' letter dated 2/3.11.92 (also on record) pointing out the stage at which statements of witnesses were required to be supplied under Rules.

19. Shri Gupta, however, insisted that copies of all the documents/affidavits referred to Annexures-III and IV of the charge Memo dated 21.9.92 should be supplied to the applicant to enable him to submit his defence statement under Rule 8(5), and in this connection relied heavily upon Govt. of India's instructions No.23 to Rule 14 CCS (CCA) Rules (Swamy's Compilation, 1995 Ed).

20. Manifestly the CCS(CCA) Rules are not applicable in the present case, applicant being

a member of an AIS(IPS) who is governed by AIS (D & A) Rules, 1969 and the related instructions contained in DPAR's O.M. dated 16.8.78, the contents, particularly paragraph 2.1 thereof which we have already noticed. Nothing has been shown to us to indicate that the said OM has been withdrawn, modified or suspended. That being the position, we find respondents' stand offering to supply another copy of those affidavits/documents listed in Annexures III and IV to the Charge Memo dated 21.9.92 which had already been supplied earlier, and asking respondent to come and inspect those documents which it was not considered feasible to supply copies of, eminently fair, and reasonable and fully in accordance with rules and instructions as well as with the principles of natural justice.

21. In this connection during hearing Shri Singhvi stated that respondents would be able to supply copies of the aforesaid Mittal Report and Kapoor Report and the documents which they had already agreed to supply, within 6 weeks of receipt of a copy of this judgment, and Shri Gupta stated that he would be in a position to submit his defence statement within six weeks of the receipt of the documents asked for.

22. In the result the OA No. 2971/92 is disposed of with the following directions:

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- (i) Prayer for copy of the Vad Marwah Inquiry report is rejected.
- (ii) Respondents are directed to supply the applicant copies of the reports of Ms. Mittal and Justice Kapur in full within six weeks from the date of receipt of a copy of this judgment.
- (iii) Respondents are directed to supply to applicant additional copies of the documents mentioned in Annexures III and IV to the Charge Memo dated 21.9.92 copies of which are stated to have already been supplied to him vide Respondents' letter dated 14.10.92, within six weeks from the date of receipt of a copy of this judgment.
- (iv) Within the aforesaid period prescribed Respondents should also give applicant a further opportunity of inspecting those documents, inspection of which was earlier allowed vide letter dated 14.10.92 and it will be open to him to avail of the same.

23. Before parting with OA No. 2971/92, we would advert to MAs No. 967/97, 1752/97 and 1857/97 filed by the applicant in this OA.

24. In MA No. 967/97 applicant prays that respondents be criminally prosecuted for having filed false affidavits while in MA. No. 1752/97 and 1857/97, he prays for summoning of some records to substantiate his allegations. He asserts that in para 4.4 of the OA he had averred that with limited resources he had worked day and night to control the riots with great devotion to duty but Respondents had denied this in their reply and had contended that he had failed to exercise effective control and supervision over his force which resulted in 450 deaths in the area under his jurisdiction and no preventive arrests were made either on 31.10.84 or from 1.11.84 to 3.11.84 when the riots were in

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full swing. Applicant asserts that this statement of Respondents that no preventive arrests were made from 31.10.84 to 3.11.84 is false in as much as 202 preventive arrests were made by him. Applicant further averred that in para 4.7 of OA-2971/92 he had asserted that the aforesaid Enquiry Committee/ Commission had conducted ex parte secret inquiries and had given no opportunity of hearing to the applicant inspite of his repeated efforts which had been replied to by Respondents to the effect that they were not aware of the contentions made in that paragraph and had denied the same. Applicant contends that this statement on the part of the Respondents is also false as they were fully aware that the inquiries conducted by Committees/ Commission were ex parte secret inquiries, in which no opportunity of hearing was given to him despite his repeated efforts administratively/ through courts of Law to get an opportunity of hearing.

25. Respondents in their reply to M.A.No.967/97 aver that it was evident from the Mittal Report that 450 deaths were reported in the Delhi South District and there was utter lack of supervision and control by the applicant over his subordinates. It had been observed that applicant had apparently let off several looters who had been earlier caught red-handed by the Addl. Commissioner of Police, Shri Gautam Kaul, his superior. The Report had gone on to show that no preventive arrests of rioters with a view to contain the law and order situation

were made in the South District under applicant's charge. Some preventive arrests were noticed in the said report but ironically of some Sikh people and it still had to be proved that the preventive measures as the applicant claims to have taken were of those who were inciting violence. As far as applicant making representations seeking an opportunity of being heard by the Committee/ Commission is concerned, Respondents state that there is nothing in their records to indicate that he had filed any representation seeking an opportunity to be heard by any of these Committees/ Commission mentioned in his O.A.

26. We notice that applicant's acts of omission and commission during the November, 1984 riots is the very subject matter of the charge Memo dated 21.9.92 on the basis of which the departmental proceedings have been initiated. The aforesaid charge Memo itself has been issued in the background of the reports submitted by the Kapoor-Mittal Committee. Under the circumstance, we do not consider it just or appropriate to adjudicate on the merits of applicant's prayer in M.A.No.697/97 at this stage lest any observations of ours made in the course of adjudication prejudice the conduct of the departmental proceeding. Furthermore we also record that the prayer in M.A. 696/97 is unconnected to the ultimate relief prayed for in the OA which is for the supply of copies of Reports/documents. Under the circumstances, MAs No.967/97;

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1752/97 and 1857/97 are dismissed without adjudication on merits, leaving it open to applicant to agitate the matter separately in accordance with law, if so advised.

OA NO. 1458/97

27. In OA No. 1458/97 the following relief has been sought:

".... in view of the facts and circumstances set out above and in the interest of justice, this Hon'ble Tribunal be graciously pleased to quash the charge-memo No.14033/8/92 UTS dated 21.9.92 initiating departmental proceedings against the applicant."

28. In the aforesaid OA No.1458/97 an interim order was also sought viz. to direct the Respondents to consider the applicant for empanelment for promotion in the next grade of Inspector General of Police, irrespective of pendency of the aforesaid Charge Memo dated 21.9.92 and to direct Respondents not to resort to sealed cover procedure in the case of the applicant but to open the sealed cover containing the DPC's recommendations relating to empanelment to the next rank of I.G. of Police.

29. In this connection after hearing in OA No.2971/92 was over, hearing on the prayer for interim relief in OA No.1458/97 commenced in respect of which respondents had filed a short reply. We noticed that many of the arguments advanced in respect of the interim relief prayed for in OA No.1458/97 also covered the main relief prayed for in that OA. Accordingly we directed the

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parties to address us on the main relief prayed for in OA No. 1458/97 on the basis of the available pleadings. Shri Sandeep Aggarwal on behalf of Shri Singhvi stated that the short reply filed by the Respondents on the prayer for interim relief may be taken as Respondents' reply to OA No. 1458/97 for the purpose of disposing of the same.

30. During the course of submissions in this OA Shri L.R. Gupta contended that all those averments which had not been specifically denied by the Respondents in their short reply, must be taken to have been admitted by them, in accordance with relevant provisions of the A.T. Act; rules of pleadings and various court rulings, as sufficient time was available with the Respondents to file their detailed reply which they had not done. He also urged that no further time should be granted to the respondents for this purpose.

31. During hearing of this OA, we allowed Shri Singhvi to make oral submissions in rebuttal of each of the grounds pressed by Shri Gupta supported with such documents as Respondents relied upon. Owing to the fact that it is as per our directions that this OA was taken up for final hearing in the absence of respondents detailed reply, and on the basis of their short reply supplemented with relevant documents and oral submissions, and as Shri Singhvi has dealt extensively with each of the grounds taken in the

OA we are unable to accept Shri Gupta's contention that merely because one or more grounds in the OA has not been specifically denied by respondents in their short reply (which had been filed essentially to meet the prayer for interim relief in the OA) the same must be deemed to have been admitted by them. Hence in the facts and circumstances of this case, this contention is rejected.

32. The first ground taken by Shri Gupta is that the Respondents were barred from basing the impugned charge memo dated 21.9.92 on the contents of the Mittal report in view of the statement made by Respondents' counsel Mrs. Avnish Ahlawat, before the Delhi High Court on 21.9.92 in C.Ps No.2271/88 and 3593/90 that neither in the charge Memo nor in the statement of allegations had any reliance been placed on the reports submitted either by Justice Kapur or Ms. Mittal. Shri Gupta contended that by basing the impugned Charge Memo on Ms. Mittal's report, despite the aforesaid statement made before the Delhi High Court, Respondents had played fraud in the matter, which vitiates their action, and the impugned charge Memo was therefore fit to be quashed and set aside. We note that on the very date this statement was made before the Delhi High Court i.e. on 21.9.92 itself, the impugned Charge Memo was issued to the applicant, and the same bench of the Delhi High Court which recorded the aforesaid statement of Mrs. Ahlawat, on 21.9.92 in its judgment dated 23.9.92 in the aforesaid C.Ps had noticed the fact that

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the disciplinary proceedings based upon the aforesaid charge memo had commenced against the applicant and had dismissed the C.P.S. Shri Singhvi has argued that Mrs. Ahlawat represented only the Union Territory of Delhi in the aforesaid L.P.S and not the Central Govt. who issued the impugned charge Memo and under the circumstances any statements made by her were not binding upon the Central Govt. He also stated that the affidavit filed by the Central Govt. does not contain any statement that the charge Memo was not based upon Ms. Mittal's report. He emphasised that a mere glance at the juxtaposition of the relevant dates made it clear that Mrs. Ahlawat was not properly briefed when she made the aforesaid statement before the Delhi High Court on 21.9.92, and even if such a statement was made by a counsel, it could not be held to prevent Respondents from relying upon the recommendations of the Mittal's report or to establish that Respondents had perpetrated fraud which warranted quashing of the impugned Charge Memo. In view of the fact that after recording Mrs. Ahlawat's statement on 21.9.92, the Delhi High Court had itself noticed without disapproval in its judgment dated 23.9.92 that disciplinary proceedings based on the impugned Charge Memo dated 21.9.92 had commenced against applicant, it is clear that Shri Gupta's contention that respondents have perpetrated fraud in the matter is without foundation and this ground is therefore rejected.

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33. The second ground taken is that the impugned Charge Memo warrants judicial interference as it violates the principles of natural justice. It is argued that Ms. Mittal's report itself, on which reliance has been placed in framing the Charge Memo, was prepared in violation of those principles, because applicant was given no opportunity of being heard before she arrived at her conclusions or to reply to those findings. It is contended that non-supply of copies of relevant reports (particularly the Mittal's report) documents, affidavits etc. on the basis of which the charges are sought to be established from 1992 till date itself violates the principle of natural justice, which is not cured by the offer now made (as discussed in OA -2971/92) to supply some of them. We note that Delhi High Court in its judgment dated 23.9.92 had dismissed applicant's challenge to the Mittal's report and Justice Kapur Report, and hence the present challenge to these reports, in so far as they are relied upon for the preparation of the Charge Memo, is barred by res-judicata. The Delhi High Court in its aforesaid judgment dated 23.9.92 had clearly held that the said reports was purely a fact finding report and it was open to Ms. Mittal to devise her own procedure for ascertaining the relevant facts and it was not legally binding upon her to examine witnesses or give the applicant an opportunity of being heard before arriving at her conclusions or to reply to those

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findings. Similarly as regard the alleged violation of principle of natural justice on the ground of non supply of the relevant reports/documents/affidavit etc., the discussions in OA No. 2971/92 make it amply clear that the interim order staying the operation of the charge Memo which was initially passed on 17.11.92 and was extended from time to time, was thereafter reiterated on 7.9.93 which continued right upto the Hon'ble Supreme Court's order dated 30.8.96. Relevant extracts of the Mittal's report were supplied to the applicant on 23.4.97, while the copies of the other documents/affidavits were either supplied to him in 1992 itself or he was afforded an opportunity to inspect them. Shri Singhvi stated that between 30.8.96 and 23.4.97 respondents were processing the matter in consultation with the concerned authorities having regard to the ~~sensitive~~ <sup>strategic</sup> nature of the Mittal report.

34. Even if some time elapsed in supplying extracts of the Mittal report to applicant, after the Hon'ble Supreme Court's order dated 30.8.96, we are unable to hold that there has been any violation of natural justice because of this lapse of time. Shri Gupta has referred to certain rulings in support of this ground namely Triloki Nath Vs. UOI 1967 SLR (SC) 759; A.K. Datta Vs. UOI 1978(2) SLR 207; B.C. Chaturvedi's case JT 1995(8)SC 65 and the CAT PB Judgment dated 22.2.94 in OA-3000 of 1991 Dr. V.P. Bansal Vs. UOI which was upheld by the Hon'ble Supreme Court on 10.8.94 in SLP No. 9175/94 but upon perusal of those rulings it is noted that they delivered in the facts and

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circumstances of those particular cases, and are not applicable to the facts of the present case. Those rulings are therefrom distinguishable and do not advance the applicant's case. Hence this ground fails.

35. The third ground taken by Shri Gupta is that the impugned Charge Memo is vitiated on account of inordinate and unconscionable delay on the part of the respondents for which no satisfactory explanation has been given by them, and respondents by abdicating their responsibility to conclude the departmental enquiry against the applicant expeditiously, despite the Delhi High Court's observations in their judgment dated 23.5.92 had caused acute mental agony to the applicant which warranted quashing of the Charge Memo. In this connection, Shri Gupta relied upon the judgments in State of M.P. Vs. Bani Singh AIR 1990 SC 1308 and State of Punjab Vs. C.L. Goel AIR 1992 SC 603.

35A. Shri Singhvi has pointed out that owing to the sheer magnitude of the riots, respondents had in the first instance to inform, guide and educate themselves before proceeding further in the matter and indeed if without doing so they had proceeded against the applicant and other officers accused of negligence/desecration of duty without proper care and scrutiny, they would have laid themselves open to the accusation that they had acted precipitately and in haste. It is for this reason that after the Ved Marwah Committee had been wound up, the Justice Rangnath Mishra Commission was set up under the Commission of Enquiries Act which led to setting up of the

Kapur-Mittal Committee whose members submitted their separate reports on 1.3.90. Taking us through the various stages of the case which have been adverted to elaborately in the foregoing paragraphs of OA-2971/92, Shri Singhvi stated that there was absolutely no reason to hold that respondents had unconsciously, deliberately or malafidely sought to delay the proceedings against the applicant. He emphasised that on the contrary it was the applicant who had abused the process of law by filing MA after MA only to confuse the issue and to prevent expeditious disposal of the departmental proceedings against him, and it was only because his case for promotion as IGP had now come up, and the sealed cover procedure had been adopted consequent to the Charge Memo being served upon him, that he was now seeking in this OA to get the Charge Memo somehow quashed, and as an interim measure for the opening of the sealed cover, irrespective of the pendency of the same.

36. A glance at the sequence of events right from November, 1984 till date, makes it abundantly clear to us that respondents cannot be said to have deliberately, malafidely or wantonly delayed the initiation of the departmental proceedings against the applicant with a view to prejudice him in his defence so as to warrant judicial interference on that ground. Here again we must emphasise that the rulings relied upon by Shri Gupta relate to the facts and circumstances of those particular cases and are clearly distinguishable on facts from the present case. In fact in C.L.Goel's case

(Supra) upon which heavy reliance has been placed by Shri Gupta, the Hon'ble Supreme Court had themselves held that having regard to the gravity of the offence, mere delay by itself was not cause enough to warrant judicial interdiction in the departmental proceedings. Hence this ground also fails.

37. The fourth ground pressed by Shri Gupta is that the respondents in issuing the impugned Charge Memo dated 21.9.92 have acted with bias, malafide and closed mind. Various paragraphs in the OA have been referred to by him in support of this contention and reliance has been placed on S. C. Das Vs. State of West Bengal- 1981 (3) SLR 737 and AIR 1964 SC 72. On the other hand, Shri Singhvi has emphasised that the Mittal report had recommended that the applicant be proceeded against under Article 311(2)(b) of the Constitution after dispensing with the enquiry and it was only because the respondents were anxious that the applicant was given the fullest opportunity to defend himself, <sup>that</sup> action under Article 311(2)(b) of the Constitution was not resorted to, and a proper departmental enquiry was ordered, which only showed that the respondents had initiated action against him with a scrupulously fair, bonafide and open mind. Shri Singhvi stressed that the respondents had no reason to be biased towards applicant, and generalised and vague allegations of bias and malafide were wholly insufficient to warrant judicial interference. For such a plea to succeed the highest degree of

particularity as well as proof was required, the burden of which rests squarely upon the applicant. We fully agree with this assertion of Shri Singhvi and are unable to detect any bias, malafide or closure of mind on the part of respondents in issuing the impugned Charge Memo dated 21.9.92. The rulings relied upon by Shri Gupta do not advance the applicant's case. Hence this ground also fails.

38. The fifth ground taken is that the impugned charge Memo warrants interference as it is a case of no evidence. Shri Gupta has asserted that some of those who had filed affidavits against the applicant before Ms. Mittal, had subsequently retracted, while others who had filed affidavits were motivated by personal animus. Alleged discrepancies and improbabilities in the contents of the affidavits in so far as they related to applicant's role in the November, 1984 riots, were also sought to be highlighted by him. In this connection Shri Gupta placed reliance on Bansal's case (Supra) and Sukhraj Singh Vs. Rajasthan High Court 1989(3) SLR 424. Shri Singhvi pointed out that the fact that there are affidavits in regard to applicant's conduct in the November, 1984 riots and the Mittal report had also indicted him, makes it clear that it was not a case of no evidence. The sufficiency and quality of that evidence was not a matter which could be gone into by the Tribunal, much less before the departmental proceedings had even commenced. If indeed there was no evidence

against him, he had nothing to fear in the departmental enquiry. The question whether the earlier affidavits or subsequent retractions were correct and the alleged discrepancies, improbabilities etc. would be gone into during the course of the departmental enquiry, and any finding at this stage even before the departmental enquiry had commenced apart from being outside the Tribunal's jurisdiction would be highly premature. We entirely agree with this argument of Shri Singhvi and the rulings relied upon by Shri Gupta do not avail the applicant. Hence this ground also fails.

39. The sixth ground taken by Shri Gupta is that the impugned Charge Memo issued by the respondents is discriminatory. He has stated that the November, 1984 riots were spread over a wide area covering a number of police stations but the respondents issued Charge Memo only selectively and it is only he and very few others who had been indicted which amounts to hostile discrimination. Shri Singhvi has stated that out of 72 officers involved, ~~only~~ 53 had been charge sheeted of whom 35 were subsequently exonerated and hence the applicant's allegation of hostile discrimination is baseless. We are unable to detect anything discriminatory in respondents' action in issuing the impugned Charge Memo dated 21.9.92 to the applicant. The ruling in Sangara Singh Vs. State of Punjab AIR 1984 SC 1499, has no application to the facts of the present case, and hence this ground also fails.

40. The last ground taken is that the impugned charge Memo dated 21.9.92 is fit to be set aside as the applicant has only two years left for superannuation, but manifestly this cannot be an adequate ground to warrant judicial interference in the charge Memo at this stage.

41. In UOI Vs. Upendra Singh 1994(24) ATC 200 the Hon'ble Supreme Court had held as follows:  
(paras 6 & 7 of the above are extracted below)

"6. In the case of charges framed in a disciplinary inquiry the Tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or the truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B.Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal Vs. Gopi Nath & Sons. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus: (SCC 317, para 8)

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to

decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

7. Now, if a court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is understandable how can that be done by the Tribunal at the stage of framing of charges? In this case, the Tribunal has held that the charges are not sustainable (the finding that no culpability is alleged and no corrupt motive attributed), not on the basis of the articles of charges and the statement of imputations but mainly on the basis of the material produced by the respondent before it, as we shall presently indicate."

42. In the background of the aforesaid ratio which is fully applicable in the present case no judicial interference in OA No. 1458/97 is warranted at this stage and the OA is dismissed.

43. As the OA itself is being dismissed, the question of issuing any interim order in the same does not arise.

44. OA No. 2971/92 together with MAs No. 967/97 ; 1752/97 and 1857/97 and OA No. 1458/97 are disposed of in terms of paragraphs 22, 26 and 42 above. No costs.

45. Copy of this judgment to be placed in both OAs' case records.

A.Vedavalli  
(DR.A.VEDAVALLI )  
MEMBER(J)

S.R.Adige  
( S.R.ADIGE )  
VICE CHAIRMAN(A),